



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**RIN 0648-BK77**

**Fisheries of the Caribbean, Gulf of Mexico, and South  
Atlantic; Reef Fish Fishery of the Gulf of Mexico;  
Amendment 53**

**AGENCY:** National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Gulf of Mexico (Gulf) Fishery Management  
Council (Council) has submitted Amendment 53 to the Fishery  
Management Plan for the Reef Fish Resources of the Gulf of  
Mexico (FMP) for review, approval, and implementation by  
NMFS. If approved by the Secretary of Commerce (Secretary),  
Amendment 53 would modify the allocation of Gulf red  
grouper catch between the commercial and recreational  
sectors, specify a new overfishing limit (OFL) and  
acceptable biological catch (ABC), and revise sector annual  
catch limits (ACLs) and annual catch targets (ACTs). The  
purposes of Amendment 53 are to revise the red grouper  
sector allocations using the best scientific information

available and to modify the allowable harvest of red grouper based on results of the recent stock assessment.

**DATES:** Written comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments on Amendment 53 identified by "NOAA-NMFS-2021-0098" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) and enter "NOAA-NMFS-2021-0098" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 53, which includes an environmental impact statement, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, and electronic copies of a minority report submitted by four Council members, may be obtained from [www.regulations.gov](http://www.regulations.gov) or the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-53-e>.

**FOR FURTHER INFORMATION, CONTACT:** Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the *Federal Register* notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the FMP being revised by Amendment 53, and, if approved, Amendment 53 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Unless otherwise noted, all weights in this document are in gutted weight.

### **Background**

Red grouper in the Gulf exclusive economic zone (EEZ) are found primarily in the eastern Gulf on offshore hard bottom areas and are managed as a single stock with commercial and recreational ACLs and a sector ACTs. The allocation of the ACL between the commercial and recreational sectors is currently 76 percent commercial and 24 percent recreational and was set through Amendment 30B to the FMP (74 FR 17603; April 16, 2009).

Commercial red grouper fishing is managed under the Grouper-Tilefish Individual Fishing Quota (IFQ) program, which began January 1, 2010 through Amendment 29 to the FMP (74 FR 44732; August 31, 2009 and 75 FR 9116; March 1, 2010). Under the IFQ program, the commercial red grouper quota is based on the commercial sector's red grouper ACT (commercial quota), and red grouper allocation is distributed on January 1 of each year to those who hold red grouper shares. Both red grouper and gag, another grouper

species managed under the IFQ program, have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag allocation, and vice versa. The multi-use provision is based on the difference between the respective ACLs and ACTs, and is explained in more detail below.

The recreational red grouper harvest is managed with catch limits, in-season and post-season accountability measures (AMs), season and area closures, a minimum size limit, and a recreational bag limit. The in-season AM for red grouper requires NMFS to close the recreational sector for the remainder of the fishing year when red grouper landings reach or are projected to reach the recreational ACL. If recreational landings exceed the red grouper recreational ACL in a fishing year, the post-season AM requires NMFS to shorten the length of the following recreational fishing season by the amount necessary to ensure landings do not exceed the recreational ACT. If the red grouper stock is overfished, NMFS must also reduce the ACL and ACT by the amount of the recreational ACL overage in the prior year. The recreational red grouper AMs were implemented in 2012 (77 FR 6988; February 10, 2012) and were modified in 2013 (78 FR 6218; January 30, 2013).

In 2018, the Council received a recommendation from its Scientific and Statistical Committee (SSC) to reduce the red grouper commercial and recreational ACLs and ACTs, effective for the 2019 fishing year. This recommendation was based on an interim red grouper analysis conducted by the Southeast Fisheries Science Center (SEFSC). The Council also heard concerns from fishermen about the condition of the red grouper stock because commercial and recreational harvests had been well below the respective quota and ACL. The SSC did not feel comfortable recommending a new acceptable biological catch based on the analysis but determined that the analysis did support recommending that the Council reduce the 2019 total ACL from 10.70 million lb (4.85 million kg) to 4.60 million lb (2.09 million kg). The Council noted the severe red tide conditions that occurred in the summer and fall of 2018 off the Florida west coast, and decided to further reduce the total ACL to an amount equivalent to the 2017 harvest of 4.16 million lb (1.89 million kg). The Council took action by initially requesting an emergency rule to reduce red grouper ACLs and ACTs (84 FR 22389, May 17, 2019), and then making the harvest reductions permanent in a subsequent framework action (84 FR 52036; October 1, 2019).

The Southeast Data, Assessment, and Review (SEDAR) 61 assessment was completed in September 2019, and used updated recreational catch and effort data from the Marine Recreational Information Program (MRIP) Access Point Angler Intercept Survey (APAIS) and Fishing Effort Survey (FES). MRIP began incorporating a new survey design for APAIS in 2013 and replaced the Coastal Household Telephone Survey (CHTS) with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 53, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. For example, the current red grouper total ACL and recreational ACL in MRIP CHTS units are 4.16 million lb (1.89 million kg) and 1.00 million lb (0.45 million kg), respectively. In MRIP-FES units, that red grouper total ACL and recreational ACL would be an estimated 5.26 million lb (2.39 million kg) and 2.10 million lb (0.95 million kg), respectively. This difference is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden rise in fishing effort. NMFS developed calibrations models to adjust historic effort estimates so that they can be

accurately compared to new estimates from MRIP FES. The calibration methodologies are discussed in Section 1.1 of Amendment 53 as well as in the SEDAR 61 final report. In addition, a publication titled "Survey Design and Statistical Methods for Estimation of Recreational Fisheries Catch and Effort" explains the different recreational fishing surveys and the time-series calibration methods, and can be found at <https://media.fisheries.noaa.gov/2021-09/MRIP-Survey-Design-and-Statistical-Methods-2021-09-15.pdf>. This publication explains the different recreational fishing surveys and the time-series calibration methods.

The SEDAR 61 assessment concluded that the Gulf red grouper stock is not overfished and overfishing is not occurring, but that as of 2017, the stock remained below the spawning stock biomass (SSB) at 30 percent of the spawning potential ratio (SPR), where SPR is the ratio of SSB to its unfished state. Based on the results of SEDAR 61, the Council's SSC recommended an OFL of 5.35 million lb (2.43 million kg) and an acceptable biological catch (ABC) of 4.90 million lb (2.22 million kg). Because these catch levels are in MRIP-FES units, the recommended ABC appears to be larger than the current total ACL of 4.16 million lb (1.89 million kg), but would actually result in a decrease



in allowable harvest when compared to the 5.26 million lb (2.39 million kg) MRIP-FES equivalent. In addition, these catch level recommendations assumed status quo sector allocations for red grouper, which were based in part on 1986-2005 MRFSS landings estimates from 1986-2005. As explained in Amendment 53, retaining the current allocation would increase the commercial ACL but substantially decrease the recreational ACL when comparing like units. Therefore, the Council requested that the SSC review alternative catch level projections based on sector allocation alternatives that used MRIP-FES data and several time series (1986-2005, 1986-2009, and 1986-2018). The SSC reviewed these alternative sector allocation scenarios, affirmed that the SEDAR 61 (2019) assessment, which included MRIP-FES recreational landings, represented the best scientific information available, and provided alternative catch level recommendations based on the allocation alternatives.

The commercial-recreational allocation impacts the catch level projections produced by the assessment. As more of the total ACL is allocated to the recreational sector, the proportion of recreational discards increases. Recreational discard mortality rates are assumed to be less than commercial discard mortality rates but the magnitude

of recreational discards is considerably greater than commercial discards. Generally, a fish caught and released by a recreational fishermen has a greater likelihood of survival than by a commercial fishermen because of how and where they fish. However, because of the much higher numbers of red grouper that are released by the recreational sector vs the commercial sector, the total number of discards that die from the recreational fishing exceeds those from the commercial fishing. This results in additional mortality for the stock and a lower projected annual yield, which means a lower OFL, ABC, and total ACL. However, this is not due to any change in how the recreational sector prosecutes the fishery but occurs because MRIP-FES estimates higher levels of fishing effort, and consequently a greater number of fish being caught, which includes discards and the associated mortality of discarding fish.

#### **Actions Contained in Amendment 53**

Amendment 53 includes actions to set the sector allocations, OFL, ABC, sector ACLs, and sector ACTs for the red grouper stock in the Gulf.

##### *Sector Allocation, OFL, and ABC*

The current allocation is 76 percent commercial and 24 percent recreational. This allocation was set through

Amendment 30B to the FMP in 2009 using commercial and recreational landings data from 1986-2005. This was the longest series available and was derived from the MRFSS. The current red grouper recreational ACL and ACT are in MRIP CHTS units. Therefore, although recreational landings are estimated using MRIP FES, they are converted to MRIP CHTS units to compare to the applicable recreational catch limit.

In Amendment 53, the Council considered several allocation alternatives: maintaining the current allocation, maintaining the current commercial ACL and allocating the remaining pounds to the recreational sector, and using the various time series reviewed by the SSC to adjust the allocation to reflect the most recent understanding of historical landings. The Council decided to adjust the allocation using the same years used to set the current allocation in Amendment 30B to the FMP (1986-2005). The Council determined that this would best represent the historic landings for the years used in Amendment 30B while accounting for the change from MRFSS data to MRIP-FES data. Because the MRIP-FES landings estimates are greater than the previous estimates of recreational landings estimates, the commercial-recreational allocation would shift from 76 percent and 24

percent, respectively, to 59.3 percent and 40.7 percent, respectively. Based on the results of SEDAR 61 and using the proposed allocation of 59.3 percent commercial and 40.7 percent recreational, the Council's SSC recommended an OFL of 4.66 million lb (2.11 million kg) and an ABC of 4.26 million lb (1.93 million kg).

#### *ACLs and ACTs*

The total ACL would be equal to the ABC, or 4.26 million lb (1.93 million kg). Applying the allocation of 59.3 percent commercial and 40.7 percent recreational results in a 2.53 million lb (1.15 million kg) commercial ACL and a 1.73 million lb (0.78 million kg) recreational ACL in MRIP FES units. When compared to the current estimated recreational ACL in MRIP-FES units of 2.10 million lb (0.95 million kg) and current commercial ACL of 3.16 million lb (1.43 million kg) and, the Council's preferred alternative results in a reduction in the ACLs for the commercial and recreational sectors of approximately 20 percent and 18 percent, respectively.

The Council did not apply the ACL/ACT Control Rule to set the commercial buffer between the ACL and ACT. Normally, a sector managed using an IFQ program without a commercial quota overage during its reference period (as was the case for the 2016-2019 reference period) used by

the Council for red grouper, would yield a 0 percent buffer from the control rule. However, both the red grouper and gag share categories in the IFQ program have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag multi-use allocation, and vice versa. Each year, the IFQ program assigns a portion of each shareholder's red grouper and gag as a multi-use allocation category. The intent of the multi-use provision is to provide for allocation if either gag or red grouper are landed as incidental catch. The amount of multi-use allocation is dependent on the difference in pounds between the commercial ACL and ACT. Therefore, the Council decided to maintain the current 5 percent buffer between the commercial red grouper ACL and ACT.

The Council did apply the ACL/ACT Control Rule to set the recreational sector buffer between the ACL and ACT. The ACL/ACT Control rule adjusts the buffer between the recreational ACL and ACT based on a number of factors, including the number and magnitude of ACL overages in the reference period, AMs in place to account for any ACL overages, and the method by which the ACL is monitored. Applying the control rule to 2016-2019 MRIP FES landings data yielded a buffer of 9 percent, one percentage point above the current 8 percent buffer.

Applying the commercial and recreational buffers to the proposed 2.53 million lb (1.15 million kg) commercial ACL and the 1.73 million lb (0.78 million kg) recreational ACL yields a proposed commercial ACT of 2.40 million lb (1.09 million kg) and a recreational ACT of 1.57 million lb (0.71 million kg) in MRIP-FES units.

### **Minority Report**

A minority report signed by four Council members raises several objections to the preferred allocation in Amendment 53. The minority report alleges the preferred allocation violates several provisions of the Magnuson-Stevens Act, and that the Council did not act in accordance with its allocation policy.

### **Proposed Rule for Amendment 53**

A proposed rule to implement Amendment 53 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 53 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the *Federal Register* for public review and comment.

### **Consideration of Public Comments**

The Council has submitted Amendment 53 for Secretarial review, approval, and implementation. Comments on Amendment 53 must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received during the respective comment periods, whether specifically directed to Amendment 53 or the proposed rule, will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 53. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 53 or the proposed rule during their respective comment periods, as well as the issues raised in the minority report, will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 1, 2021.

**Ngagne Jafnar Gueye,**

*Acting Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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